

new issue would avoid injustice or ensure that judgment will be rendered in accordance with the law and facts.

§ 2200.93 Briefs before the Commission.

(a) *Requests for briefs.* The Commission ordinarily will request the parties to file briefs on issues before the Commission. After briefs are requested, a party may, instead of filing a brief, file a letter setting forth its arguments, a letter stating that it will rely on its petition for discretionary review or previous brief, or a letter stating that it wishes the case decided without its brief. The provisions of this section apply to the filing of briefs and letters filed in lieu of briefs.

(b) *Filing briefs.* Unless the briefing notice states otherwise:

(1) *Time for filing briefs.* The party required to file the first brief shall do so within 40 days after the date of the briefing notice. All other parties shall file their briefs within 30 days after the first brief is served. Any reply brief permitted by these rules or by order shall be filed within 15 days after the second brief is served.

(2) *Sequence of filing.* (i) If one petition for discretionary or interlocutory review has been filed, the petitioning party shall file the first brief.

(ii) If more than one petition has been filed but only one was granted, the party whose petition was granted shall file the first brief.

(iii) If more than one petition has been filed, and more than one has been granted or none has been granted, the Secretary shall file the first brief.

(iv) If no petition has been filed, the Secretary shall file the first brief.

(3) *Reply briefs.* The party who filed the first brief may file a reply brief. Additional briefs are otherwise not allowed except by leave of the Commission.

(c) *Motion for extension of time for filing brief.* An extension of time to file a brief will ordinarily not be granted except for good cause shown. A motion for extension of time to file a brief shall be filed at the Commission no later than 3 days prior to the expiration of the time limit prescribed in paragraph (b) of this section, shall comply with § 2200.40 and shall include

the following information: When the brief is due, the number and duration of extensions of time that have been granted to each party, the length of extension being requested, the specific reason for the extension being requested, and an assurance that the brief will be filed within the time extension requested.

(d) *Consequences of failure to timely file brief.* The Commission may decline to accept a brief that is not timely filed. If a petitioning party fails to respond to a briefing notice or expresses no interest in review, the Commission may vacate the direction for review, or it may decide the case without that party's brief. If the non-petitioning party fails to respond to a briefing notice or expresses no interest in review, the Commission may decide the case without that party's brief. If a case was directed for review upon a Commissioner's own motion, and any party fails to respond to the briefing notice, the Commission may either vacate the direction for review or decide the case without briefs.

(e) *Length of brief.* Except by permission of the Commission, a main brief, including briefs and legal memorandums it incorporates by reference, shall contain no more than 35 pages of text. A reply brief, including briefs and legal memorandums it incorporates by reference, shall contain no more than 20 pages of text.

(f) *Table of contents.* A brief in excess of 15 pages shall include a table of contents.

(g) *Failure to meet requirements.* The Commission may return briefs that do not meet the requirements of paragraphs (e) and (f) of this section.

(h) *Number of copies.* The original and eight copies of a brief shall be filed. See § 2200.8(d)(2).

(i) *Brief of an amicus curiae.* The Commission may allow a brief of an amicus curiae pursuant to the criteria of § 2200.24. Any brief of an amicus curiae must meet the requirements of paragraphs (b) through (h) of this section. No reply brief of an amicus curiae will be received.

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